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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85970860
Applicant	Internet Promise Group LLC
Applied for Mark	EASY ACCESS
Correspondence Address	INTERNET PROMISE GROUP LLC 2390 CRENSHAW BLVD STE 239 TORRANCE, CA 90501-3300 UNITED STATES chand@InternetPromise.com
Submission	Reply Brief
Attachments	REPLY Brief for EASY_ACCESS_Final_As_Filed.pdf(78658 bytes )
Filer's Name	Tara Chand
Filer's e-mail	chand@internetpromise.com
Signature	/Tara Chand/
Date	01/09/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: INTERNET PROMISE GROUP®, LLC  Applicant
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Mark: EASY ACCESS Application Ser. No.: 85/970,860 Filed: 06/26/2013
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**REPLY BRIEF**

Honorable Commissioner of Trademarks  
P O Box 1451  
Alexandria, VA 22313-1451.

Internet Promise files the attached Reply Brief to the Examining Attorney Answer Brief dated 12-21-2015. The Reply Brief is timely filed within 20 days of the Examining Attorney Brief dated 12/21/2015 that is on or before 01/10/2015.

Date: January 09, 2016

Respectfully submitted,  
By: /Tara Chand/  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: INTERNET PROMISE GROUP®, LLC  Applicant
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Mark: EASY ACCESS  
Application Ser. No.: 85/970,860  
Filed: June 26, 2013

**REPLY BRIEF**

**I. THE ISSUE ON APPEAL**

Should Applicant Internet Promise Group LLC's ("Internet Promise") mark EASY ACCESS be refused registration on the grounds of likelihood of confusion with the trademark registration for EZACCESS (no ID) where (1) the identified goods are substantially different, (2) the channels of trade and (3) sophistication of the customers implicated thereby are substantially different, and where (4) the customers and potential goods implicated thereby do not overlap?

**II. RECITATION OF THE FACTS**

Internet Promise applied-for registration of its mark, EASY ACCESS for the following identification of the goods:

*Computer system with computer hardware and computer software applications, that interfaces with wireless mobile devices and business authentication systems to provide two-factor authentication of remote users to Internet Servers in Class 009.*

The Trademark Examining Attorney refused registration on the grounds that the mark so resembles the registered mark EZACCESS (in U.S. Registration No. 4,514,959) that it is likely that a potential consumer would be confused, mistaken,

or deceived as to the source of the goods/services of Internet Promise and registrant.

More specifically, the Examining Attorney cited the following registration for EZACCESS:

U.S. Registration No. 4,514,959 for the following goods:

*Computer software, namely computer software for user authentication, authorization and login to protected website accounts and secure computer networks resource.*

Internet Promise provided arguments to the Trademark Examining Attorney, in office action response, as to why and how the marks are different for the likelihood of confusion analysis and these weigh against likelihood of confusion. The Trademark Examining Attorney, however, maintained her refusal, and Internet Promise Group timely filed the present notice of appeal and subsequently timely filed Applicant's Appeal Brief.

**Examining Attorney Filed Answer Brief dated 12/21/2015.**  
**Appellant/Applicant files the following Reply Brief.**

### **III. REPLY BRIEF**

**This Reply Brief is structured in two different and distinct parts. In the first part, Part I, a request is made to the Board to remand the case back to Examining Attorney for reasons detailed herein and in the second part, Part II, each of the issues in the Examining Attorney Answer Brief are responded to.**

**The Reply Brief is so structured because, under Part I, if the Board decided to remand the case back to Examining Attorney, there then would be no need to review Part II by the Board.**

**PART - I**

**REQUEST TO THE BOARD TO REMAND THE CASE BACK TO  
EXAMINING ATTORNEY**

**Board please take notice that the Applicant proposed to the Examining Attorney via an e-mail, remanding the case back to the Examining Attorney based on the following two issues that were raised in the Examining Attorney Brief:**

1. Examining Attorney did not consider the evidence submitted in the Applicant Brief related to the definitions of computer goods and Examining Attorney asked the Board to disregard this evidence, as not being timely submitted.
2. The nature of the goods from the Identification of the goods/services for the applied for mark were not entirely clear to the Examining Attorney; and thus Examining Attorney had based Examining Attorney Brief on the issues of (1) nature of the goods, (2) trade channels, and (3) sophistication of the customers based on an improper understanding of the identification of the goods/services, because the goods/services for the applied for mark were directed to an aspect of cyber security related to strong or two-factor remote user authentication, an aspect of cyber security defense, a subject that is not of common knowledge.

Examining Attorney did not consent to such a remand; please refer to the e-mail communication copied below.

I do not consent to a remand.

Regards,  
/ingrideulin/

**From:** Tara Chand [<mailto:Chand@InternetPromise.com>]  
**Sent:** Wednesday, January 06, 2016 7:41 AM  
**To:** Eulin, Ingrid  
**Subject:** Trademark Application 85/970,860 EASY ACCESS  
**Importance:** High

January 6<sup>th</sup>, 2016

Ingrid Eulin  
Examining Attorney  
Law Office 111  
571 272 9380

Dear Ms. Eulin,

In this case, application number 85/970,860 for the mark EASY ACCESS, I just read Examining Attorney's Appeal Brief to the Board, dated 12/21/2015.  
Based on the contents of this Brief, EA did not have an opportunity to consider the additional evidence submitted with the Applicant's Appeal Brief.

Further, since the goods are related to Cyber Security, knowledge of some aspects of cyber security would be helpful for proper examination.

Therefore, with your consent I propose remanding this case in Appeal, back to the Examining Attorney for proper consideration of this evidence as well as better understanding of the nature of the goods for the proposed mark.

Would you consent to such a transfer. Please let me know ASAP.

Thank you

Best

Tara Chand,  
Internet Promise Group, Applicant

**Therefore, Applicant requests the Board that these two issues need to be properly considered and evaluated by the Examining Attorney for proper evaluation of the application on the issue of likelihood of confusion and requests that the Board remand the case back to Examining Attorney. Board has the authority to remand the case back to Examining Attorney.**

**These two issues are further detailed herein.**

**1. Examining Attorney did not consider the evidence submitted in the Applicant Brief related to the definitions of computer goods and Examining Attorney asked the Board to disregard this evidence, as not being timely submitted.**

Internet Promise is an innovation enterprise in Cyber Security Defense technologies. The Internet Promise's application for the mark EASY ACCESS was for one of these patented cyber security defense technologies in the space of strong or two-factor remote user authentication and thus directed to a unique product/service, not commercially available.

The identification of the goods/services as applied is:

*Computer system with computer hardware and computer software applications, that interfaces with wireless mobile devices and business authentication systems to provide two-factor authentication of remote users to Internet Servers in Class 009.*

Applicant from a final office action, and based on this identification of the goods, Applicant was of the belief that the Examining Attorney was not properly understanding the identification of the goods for the Internet Promise's mark. Thus Applicant as part of his Appeal Brief had attached evidence related to

definitions of computer related goods, as also addressed in the Applicant's Appeal Brief along with cite of the relevant case law.

This Evidence provided and clarified definitions from publicly available literature on computer hardware and computer software goods and cited case law that this distinction is relevant and important for a proper consideration of the identification of the goods/services.

Examining Attorney has in Examining Attorney Brief had argued that there is no distinction between Internet Promise's goods and prior registered mark goods as considering both of them as being directed to computer software.

The Applicant's Brief, had addressed this issue of identification of the goods in detail based on this evidence and this cannot be disregarded by the Examining Attorney. Hence this request to transfer the case back to Examining Attorney is justified on this ground.

Hence, it is important that the case be remanded back to Examining Attorney for proper consideration of the evidence as it relates directly to the proper evaluation of the Internet Promise's mark and its identification of the goods.

**2. The nature of the goods from the Identification of the goods/services for the applied for mark were not entirely clear to the Examining Attorney; and thus Examining Attorney had based Examining Attorney Brief on the issues of (1) nature of the goods, (2) trade channels, and (3) sophistication of the customers based on an improper understanding of the**



**identification of the goods/services, because the goods/services for the applied for mark were directed to an aspect of cyber security related to strong or two-factor remote user authentication, an aspect of cyber security defense, a subject that is not of common knowledge.**

A correct understanding of the identification of goods/services is of critical importance, in a likelihood of confusion determination of a mark, for the *du Pont* factors of (i) commercial impression, (ii) nature and similarity of the goods, (iii) sophistication of customers, and (iv) trade channels.

Without a correct understanding of the identification of goods/services, a proper evaluation of the mark for the likelihood of confusion cannot be conducted. Applicant respectfully submits that based on Examining Attorney Brief, on these *du Pont* factors of (i) commercial impression, (ii) nature and similarity of the goods, (iii) sophistication of customers, and (iv) trade channels, Examining Attorney analysis is faulty.

During Examination, Examining Attorney had not requested specific details more than those provided in the identification of the goods and thus Applicant assumed that the Examining Attorney had understood the nature and scope of the goods and the relevant trade channels.

Internet Promise is an innovation enterprise in Cyber Security Defense technologies. The Internet Promise's application for the mark EASY ACCESS was for one of these patented cyber security defense technologies in the space of strong or two-factor remote user authentication and thus directed to a unique product/service, not commercially available.

The identification of the goods/services as applied is:

*Computer system with computer hardware and computer software applications, that interfaces with wireless mobile devices and business authentication systems to provide two-factor authentication of remote users to Internet Servers in Class 009.*

Applicant from a final office action, and based on this identification of the goods, Applicant was of the belief that the Examining Attorney was not properly understanding the identification of the goods for the Internet Promise's mark.

Thus Applicant as part of his Appeal Brief had provided detailed arguments on the nature of the goods and the trade channels that are consistent with the identification of the goods.

Based on Examining Attorney brief, it is clear that Examining Attorney did not take these details on the nature of the goods and the trade channels into account during the examination process. Therefore, Examining Attorney was unable to make a proper evaluation of (i) commercial impression, (ii) nature and similarity of the goods, (iii) sophistication of customers, and (iv) trade channels, and thus Examining Attorney evaluation is incomplete and thus faulty for the likelihood of confusion based on these du Pont factors.

Hence, it is important that the case be remanded back to Examining Attorney for proper evaluation of the Internet Promise's mark and its identification of the goods.

In conclusion, Internet Promise has made a good and sufficient showing why the case be remanded back to the Examining Attorney and requests that the case be

remanded back to Examining Attorney. Such a remand is within the authority of the Board to remand the case back to Examining Attorney for the reasons as detailed above.

**PART - 2**  
**RESPONSE TO THE ISSUES ADDRESSED IN**  
**THE EXAMINING ATTORNEY BRIEF:**

**Examiner Attorney Brief: The Marks are Highly Similar:**

First Examining Attorney arguments are summarized here before providing Appellant's response.

Examining Attorney contends the marks are highly similar because overall commercial impressions are sufficiently similar so that source confusion is likely to result.

Further Examining Attorney cites the case of *In re Team Worldwide Corp.* a 2007 case, where the court had held affirmed refusal of proposed mark EASY BED over prior mark EZ BED citing similar overall commercial impression.

Further, Examining Attorney contends based on the American Heritage dictionary meaning of the abbreviation EZ as having the same meaning EASY.

**RESPONSE:**

As the Examining Attorney has stated in her arguments and has cited the applicable law that likelihood of confusion determination is made on a case by case basis based on the factors set forth in *du Pont*.

Then Examining Attorney then goes on to cite the case of *In Re Team Worldwide* for the conclusion that since EASY BED refusal was affirmed over

prior mark EZ BED, then the proposed mark here for EASY ACCESS refusal should likewise be affirmed over prior mark EZACCESS. Citing this case law negates Examining Attorney's own cite of the law that the likelihood of confusion determination is based on a case by case basis applying the *du Pont* factors to each case, as it is the totality of factors based on applying different weight to each factor that is required in the likelihood of confusion determination.

Therefore, Examining Attorney's cite of *In Re Team Worldwide* is without merit on the facts of this case in a case by case analysis and the facts of *In Re Team Worldwide* can never be same or even similar to the facts of the case at hand, given the nature of the goods and the trade channels.

Examining Attorney cites dictionary evidence that the word EZ in the American Heritage dictionary is equated to EASY and hence these two words Easy in the Applied for mark EASY ACCESS and EZ in prior registered mark EZACCESS are virtually identical.

Applicant avers this line of argument for the reasons as (i) it is a single unitary mark that is not subject to in part piecemeal analysis and (ii) as the visual impressions of the two marks are entirely different and when exposed to the marks a retail purchaser does not and is not expected to ascertain the meaning or translation of a word and consult a dictionary to determine what a mark means but sees the mark as a single visual mark for identification purposes and not for an analysis of what the mark may mean.

Further, the law is clear that in a likelihood of confusion analysis , the similarity of the mark plays no role at all as is clear from the cites and legal analysis copied here from the Appellant's Principal Brief:

In a likelihood of confusion analysis under section 2(d), the issue is not whether the respective marks themselves, or the goods or services offered under the marks, are likely to be confused but, rather, whether there is a likelihood of confusion as to the source or sponsorship of the goods or services because of the marks used thereon. *See, e.g., Paula Payne Prods. Co. v. Johnson's Publ'g Co.*, 473 F.2d 901, 902, 177 U.S.P.Q. 76, 77 (C.C.P.A. 1973) (“[T]he question is not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods they identify emanate from the same source.”); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 U.S.P.Q. 2d 1201, 1205 (Fed. Cir. 2003) (“[T]he...mistaken belief that [a good] is manufactured or sponsored by the same entity [as another good] ... is precisely the mistake that §2(d) of the Lanham Act seeks to prevent.”); *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 U.S.P.Q. 2d 1687, 1689 (Fed. Cir. 1993) (“The degree of ‘relatedness’ must be viewed in the context of all the factors, in determining whether the services are sufficiently related that a reasonable consumer would be confused as to source or sponsorship.”); *In re Binion*, 93 U.S.P.Q. 2d 1531, 1534, 1535 (TTAB 2009); *In re Ass’n of the U.S. Army*, 85 U.S.P.Q. 2d 1264, 1267-68, 1270 (TTAB 2007); *Hilson Research Inc. v. Soc’y for Human Res. Mgmt.*, 27 U.S.P.Q. 2d 1423, 1429 (TTAB 1993) (“Although confusion, mistake or deception about source or origin is the usual issue posed under Section 2(d), any confusion made likely by a junior user’s mark is cause for refusal; **likelihood of confusion encompasses confusion of sponsorship, affiliation or connection.**”).

**In the present case, there is no likelihood of confusion of sponsorship, affiliation or connection as addressed in detail in the Applicant's Principal Brief.**

Further overall commercial impressions are not highly similar as they are very different, based on the nature of the goods and the trade channels. The factor of commercial impression cannot be applied in isolation devoid of the nature of the goods and the trade channels. Examining Attorney in arguing overall commercial impressions are sufficiently similar based on the mark itself and not the nature of the goods and the trade channel as have been detailed in the Applicant's Principal Brief.

**Examiner Attorney Brief: The Goods Are Closely Related:**

Examining Attorney contends the respective goods need only be "related in some manner and/or if the circumstances surrounding their marketing be such that they could give rise to the mistaken belief that the goods/services emanate from the same source." Coach Servs, Inc..... Thus here given the highly similar nature of the marks, if not identical, the degree of similarity between the goods of the respective parties need not be great.

Examining Attorney states that when assessing the relatedness of goods the question of likelihood of confusion is determined based on the description of the goods stated in the application and registration at issue not of extrinsic evidence of actual use.

In this case neither identification set forth in the application nor registration include any restrictions as to nature, type, channel of trade, or classes of

purchasers. Therefore it is presumed that these goods travel in all normal channels of trade and are available to the same class of purchasers.

**Response:**

Appellant/Applicant argues in response that the goods are not only not closely related, they are NOT at all related, as one has to do with strong or two-factor remote user authentication using a mobile wireless device and its unique interfaces with a business's authentication systems and the other has to do with password based login on a webpage.

Examining Attorney acknowledged in Examining Attorney Brief that Examining Attorney analysis was based on the identification of the goods as best understood by the Examining Attorney. Examining Attorney has failed to understand the goods as they are directed to an esoteric branch of cyber security defense that of strong or two-factor remote-user-authentication.

The goods cannot be properly analyzed with lack of understanding of the identification of the goods as Examining Attorney did not seek further details on the identification of goods, Examining Attorney cannot now argue, that Examining Attorney analysis is based on lack of understanding of the goods.

The identification of goods is and would be readily understandable to one with knowledge of science of remote user authentication of cyber security defense of a connected system. Further the identification of the goods would be readily understandable by an objective person based on the identification of the goods. Please refer to the identification of the good directed to a computer systems and not computer software.

**Examiner Attorney Brief: Trade Channels Are Similar:**

Examining Attorney contends that record is devoid of evidence that would establish that Appellant's consumer are sophisticated or that its goods require careful deliberation or thought with respect to use, selection, or purchase. There is no evidence that the goods are expensive or specialized.... and as such contrary to Appellant's claim, its consumers do not appear to be sophisticated or different from Registrant's.

Moreover, comparing the goods as described in the application and the registrations.... the identified goods are presumed to travel in the same channels of trade to the same class of purchasers.

**Response:**

It is clear from the identification of the goods, reproduced below for reader convenience, that the goods/services are complex computer system, as being based on deploying a two-factor remote user authentication technology requiring a computer system with unique computer hardware and computer software that interfaces wireless mobile devices and business authentication systems.

From this identification of the goods/services an objective person will make and objective determination that these are complex computer systems and such computer systems require a business entity to field and deploy such complex computer system in the field of cyber security and strong or two-factor remote user authentication for use by a retail customer of the business.



The identification of the goods/services as applied is:

*Computer system with computer hardware and computer software applications, that interfaces with wireless mobile devices and business authentication systems to provide two-factor authentication of remote users to Internet Servers in Class 009.*

Moreover, the Examining Attorney never requested any more information on the identification of the goods during the examination. Hence Examining Attorney arguments on this issue are without merit.

### **CONCLUSION:**

As has been addressed in Part I of the Reply Brief, Applicant has requested a remand of the case back to Examining Attorney, which was not consented to by the Examining Attorney and hence a request is being made to the Board to remand the case back to the Examining Attorney for the good and sufficient reasons as detailed above in the Reply Brief.

In the alternative, based on the Applicant's Principal Brief and The Reply Brief, the Examining Attorney's rejection should be reversed and the mark be allowed to proceed to notice of issuance.

Date: January 09, 2016

Respectfully submitted,

By: /Tara Chand/

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